



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB4491

by Rep. Scott Drury

SYNOPSIS AS INTRODUCED:

735 ILCS 5/9-106
735 ILCS 5/9-111

from Ch. 110, par. 9-106
from Ch. 110, par. 9-111

Amends the Forcible Entry and Detainer Article of the Code of Civil Procedure. Provides that in an action for possession for unpaid condominium expenses, a unit owner may raise as defenses: (1) a material breach of any duty set forth in the Condominium Property Act or governing condominium instruments or rules and regulations or any applicable statute or ordinance applicable to the unit owner's possession of the condominium unit; and (2) improper motive for bringing the action. Provides that an association is barred from recovering any attorney's fees and costs against a unit owner if the association is found by a court to have breached an obligation under the Forcible Entry and Detainer Article or the Condominium Property Act or, in the case of any member of the association's board of managers, is found to have breached a fiduciary duty to the unit owner or the association.

LRB099 16938 HEP 42966 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Code of Civil Procedure is amended by
5 changing Sections 9-106 and 9-111 as follows:

6 (735 ILCS 5/9-106) (from Ch. 110, par. 9-106)

7 Sec. 9-106. Pleadings and evidence. On complaint by the
8 party or parties entitled to the possession of such premises
9 being filed in the circuit court for the county where such
10 premises are situated, stating that such party is entitled to
11 the possession of such premises (describing the same with
12 reasonable certainty), and that the defendant (naming the
13 defendant) unlawfully withholds the possession thereof from
14 him, her or them, the clerk of the court shall issue a summons.

15 The defendant may under a general denial of the allegations
16 of the complaint offer in evidence any matter in defense of the
17 action. Except as otherwise provided in Section 9-120, no
18 matters not germane to the distinctive purpose of the
19 proceeding shall be introduced by joinder, counterclaim or
20 otherwise. However, a claim for rent may be joined in the
21 complaint, and judgment may be entered for the amount of rent
22 found due.

23 In an action brought under Section 9-111 of this Code

1 against a unit owner, as that term is defined under the
2 Condominium Property Act, the unit owner may raise as defenses:

3 (1) a material breach of any duty set forth in the
4 Condominium Property Act or governing condominium
5 instruments as that term is defined under the Condominium
6 Property Act or rules and regulations or any applicable
7 statute or ordinance applicable to the unit owner's
8 possession of the condominium unit; and

9 (2) improper motive for bringing the action.

10 (Source: P.A. 90-360, eff. 1-1-98.)

11 (735 ILCS 5/9-111) (from Ch. 110, par. 9-111)

12 Sec. 9-111. Condominium property.

13 (a) As to property subject to the provisions of the
14 "Condominium Property Act", approved June 20, 1963, as amended,
15 when the action is based upon the failure of an owner of a unit
16 therein to pay when due his or her proportionate share of the
17 common expenses of the property, or of any other expenses
18 lawfully agreed upon or the amount of any unpaid fine, and if
19 the court finds that the expenses or fines are due to the
20 plaintiff, the plaintiff shall be entitled to the possession of
21 the whole of the premises claimed, and judgment in favor of the
22 plaintiff shall be entered for the possession thereof and for
23 the amount found due by the court including interest and late
24 charges, if any, together with reasonable attorney's fees, if
25 any, and for the plaintiff's costs. The awarding of reasonable

1 attorney's fees shall be pursuant to the standards set forth in
2 subsection (b) of this Section 9-111. The court shall, by
3 order, stay the enforcement of the judgment for possession for
4 a period of not less than 60 days from the date of the judgment
5 and may stay the enforcement of the judgment for a period not
6 to exceed 180 days from such date. Any judgment for money or
7 any rent assignment under subsection (b) of Section 9-104.2 is
8 not subject to this stay. The judgment for possession is not
9 subject to an exemption of homestead under Part 9 of Article
10 XII of this Code. If at any time, either during or after the
11 period of stay, the defendant pays such expenses found due by
12 the court, and costs, and reasonable attorney's fees as fixed
13 by the court, and the defendant is not in arrears on his or her
14 share of the common expenses for the period subsequent to that
15 covered by the judgment, the defendant may file a motion to
16 vacate the judgment in the court in which the judgment was
17 entered, and, if the court, upon the hearing of such motion, is
18 satisfied that the default in payment of the proportionate
19 share of expenses has been cured, and if the court finds that
20 the premises are not presently let by the board of managers as
21 provided in Section 9-111.1 of this Code Act, the judgment
22 shall be vacated. If the premises are being let by the board of
23 managers as provided in Section 9-111.1 of this Code Act, when
24 any judgment is sought to be vacated, the court shall vacate
25 the judgment effective concurrent with the expiration of the
26 lease term. Unless defendant files such motion to vacate in the

1 court or the judgment is otherwise stayed, enforcement of the
2 judgment may proceed immediately upon the expiration of the
3 period of stay and all rights of the defendant to possession of
4 his or her unit shall cease and determine until the date that
5 the judgment may thereafter be vacated in accordance with the
6 foregoing provisions, and notwithstanding payment of the
7 amount of any money judgment if the unit owner or occupant is
8 in arrears for the period after the date of entry of the
9 judgment as provided in this Section. Nothing herein contained
10 shall be construed as affecting the right of the board of
11 managers, or its agents, to any lawful remedy or relief other
12 than that provided by Part 1 of Article IX of this Code Act.

13 This amendatory Act of the 92nd General Assembly is
14 intended as a clarification of existing law and not as a new
15 enactment.

16 (b) For purposes of determining reasonable attorney's fees
17 under subsection (a), the court shall consider:

18 (i) the time expended by the attorney;

19 (ii) the reasonableness of the hourly rate for the work
20 performed;

21 (iii) the reasonableness of the amount of time expended
22 for the work performed; and

23 (iv) the amount in controversy and the nature of the
24 action.

25 (c) The association is barred from recovering any
26 attorney's fees and costs against a unit owner if the

1 association is found by a court to have breached an obligation
2 under this Article or the Condominium Property Act or, in the
3 case of any member of the association's board of managers, is
4 found to have breached a fiduciary duty to the unit owner or
5 the association.

6 (Source: P.A. 91-196, eff. 7-20-99; 92-540, eff. 6-12-02.)